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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Honorable Bob Graham  
United States Senate  
P.O. Box 3050  
Tallahassee, Florida 32315

Dear Senator Graham:

Thank you for your letter dated June 1, 1995, seeking a status report on MM Docket No. 95-76. The petition for rule making in that proceeding was filed on August 11, 1994, requesting the downgrade of Station WXDJ(FM) from Channel 239C1 to 239C2, the reallocation of Channel 239C2 from Homestead, Florida to North Miami Beach, Florida, and the modification of the license of Station WXDJ(FM) to specify North Miami Beach as its community of license. A Notice of Proposed Rule Making was adopted on May 30, 1995, and released on June 9, 1995.

A copy of the Notice has been enclosed for your information. Thank you for your interest in this matter.

Sincerely,

Roy J. Stewart  
Chief, Mass Media Bureau

Enclosure

cc: FCC Reference Center (Rm. 239; Secretary Ofc. (Rm. 222)

j:allocate/graham

Typed: 6-21-95/emd/NWalls

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BOB GRAHAM  
FLORIDA

# United States Senate

WASHINGTON, DC 20510-0903

June 1, 1995

*Mass  
Station FM  
2550*

Ms. Lauren Belvin, Acting Director  
Federal Communications Commission  
Office of Legislative Affairs  
1919 M Street, Room 808  
Washington, D.C. 20554

Dear Ms. Belvin:

I have been advised that a rulemaking petition is currently pending in the Mass Media Bureau which requests a change in the designated city of license of FM Radio Station WXDJ - 95.7 from Homestead, Florida to North Miami Beach, Florida. The petition was filed by New Age Broadcasting, Inc. on August 11, 1994.

It is my understanding that the City Commission of North Miami Beach and its Mayor, Jeffrey Michcom, are in full support of having WXDJ licensed to their community. It appears that granting the change in designated city of license would serve to enhance service to the substantial minority population of greater Miami.

I urge you to give every consideration to this petition. Please keep my office apprised of the progress of this proposal and advise me of the outcome. You may address your reply to my state office: Post Office Box 3050, Tallahassee, Florida 32315, Attention: Sharon McLanahan.

Since this application was submitted eight months ago, an expeditious resolution would be appreciated. Thank you for your attention to this matter.

With kind regards,

Sincerely,



United States Senator

BG/slm

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 95-76

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Homestead and North Miami  
Beach, Florida)

RM-8611

**NOTICE OF PROPOSED RULE MAKING**

Adopted: May 30, 1995;

Released: June 9, 1995

By the Chief, Allocations Branch:

Comment Date: July 31, 1995

Reply Comment Date: August 15, 1995

1. The Commission has before it for consideration a petition for rule making filed by New Age Broadcasting, Inc., ("petitioner"), licensee of Station WXDJ(FM), Channel 239C1, Homestead, Florida, proposing the downgrade of its station from Channel 239C1 to Channel 239C2, the reallocation of Channel 239C2 from Homestead to North Miami Beach, Florida, and the modification of Station WXDJ(FM)'s license to specify North Miami Beach as its community of license.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Modification"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Petitioner states that the requested reallocation to North Miami Beach is mutually exclusive with the existing allotment of Channel 239C1 at Homestead. In support of its proposal petitioner states that the reallocation of Channel 239C2 from Homestead (population 26,866)<sup>1</sup> to North Miami Beach (population 35,359) would provide North Miami Beach with its first local transmission service, and would not deprive Homestead of its sole local aural transmission service.<sup>2</sup> Petitioner notes that Station WXDJ will not be moving into an Urbanized Area, as both Homestead and North Miami Beach, Florida are currently located within the Miami-Hialeah Urbanized Area, and there will be no impact on the number of transmission services currently available to Homestead or North Miami Beach. Petitioner also claim that the reallocation of Station WXDJ(FM) as a Class C2 facility at North Miami Beach

will provide service to 1,960,358 persons, as compared to the present service to 1,760,191 persons at Homestead's currently licensed Class C1 facility. There will be a net population gain of 200,167 persons within the city grade service contour, and 34,037 persons will lose service. Petitioner further notes that it has not operated with its licensed facility since Hurricane Andrew destroyed its tower in August 1992, WXDJ has been operating from temporary facilities since the hurricane. Therefore, the people losing service have not actually received service from Station WXDJ(FM) for two years, since the temporary facility does not provide service to any of the 34,037 persons theoretically losing service. Petitioner also claims that all of the area losing service from WXDJ will receive at least two FM signals, because the entire area served by Station WXDJ is also served by Station WMCU(FM), Miami, Florida and Station WRTO(FM), Goulds, Florida.

3. In further support of its proposal petitioner states that North Miami Beach is an incorporated community with a 1990 U.S. Census population of 35,359 persons. North Miami Beach is an independent community with its own unique needs and attributes. It has its own mayor, city council, daily newspaper, and chamber of commerce. Its local government is responsible for providing many of the city's civil services, including its own local police and library services. Whereas, Homestead is interdependent with the Miami-Hialeah Urbanized Area because it relies on central Miami for most of its goods and services.

4. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. However, we believe the proposal warrants consideration since, it would not deprive Homestead of its only local aural transmission service, and its use is mutually exclusive with that of North Miami Beach. Since Homestead and North Miami Beach are both located in the Miami Hialeah Urbanized Area, we question whether North Miami Beach is deserving of a local service preference, or whether it should be credited with all of the aural services licensed to the Miami Hialeah Urbanized Area. See *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). In addition, we acknowledge petitioner's claim that its proposal will provide service to a larger population, we must take into account the fact that existing service will be deleted from a community. With respect to evaluating proposals to change the community of license, the Commission has stated, "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another." See *Modifications, supra.*, 5 FCC Rcd at 7097 (1990); see also, *Report and Order (Eatonton and Sandy Springs, Georgia; Anniston and Lineville, Alabama)*, 6 FCC Rcd 6580 (1991), *App. for rev. pend.* Since we are concerned with the loss of service to the community of Homestead, we request petitioner to submit any additional information as the overall public interest benefits that would be advanced from a grant of this proposal. We also request that the petitioner provide information showing the areas and populations which will lose existing service if Station WXDJ(FM) is downgraded to

<sup>1</sup> Population figures taken from the 1990 U.S. Census.

<sup>2</sup> Homestead will continue to receive service from Station

WOIR(AM), and there is a pending application for a new educational FM station on file (BPED-931213MS).

Channel 239C2 and reallocated to North Miami Beach. The study should also indicate the number of reception services which are now available within the gain and loss areas.<sup>3</sup>

5. We believe petitioner's proposal warrants consideration. Channel 239C2 at Homestead could be reallocated to North Miami Beach, Florida, since it would provide the community of North Miami Beach with its first local aural transmission service. A staff engineering analysis has determined that Channel 239C2 can be allocated to North Miami Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.8 kilometers (14.8 miles) south of the community.<sup>4</sup> In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 239C2 at North Miami Beach.

6. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No.	
	Present	Proposed
Homestead, Florida	239C1	--
North Miami Beach, Florida	--	239C2

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before July 31, 1995, and reply comments on or before August 15, 1995, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Carl R. Ramey  
Todd M. Stansbury  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
(Attorneys for Petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Com-

<sup>3</sup> Reception services are those aural broadcast services that can be received within a given geographical area, including full-time AM and FM commercial stations. In determining reception service provided by an FM station, the area of service circumscribed by the station's 1.0 mV/m signal contour should be considered, assuming maximum facilities for the class of station, except Class C. For Class C stations, the licensed facilities or the minimum Class C facilities, whichever is greater, should be considered. The area of reception for full-time AM stations is defined according to whether it is a Class A AM station or another class of full-time AM station. For a Class A station, called a clear channel station, the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed

facilities. For allocation purposes, all other classes of full-time AM stations, reception service is defined as that service received within a station's *nighttime* interference-free contour. For purposes of determining the availability of aural services in the areas affected by a change of community proposal, a petitioner should include in its study reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well served. Accordingly, within a given reception area, any count of radio services beyond five is unnecessary.

<sup>4</sup> The coordinates for Channel 239C2 at North-Miami-Beach, Florida are North Latitude 25-42-55 and West Longitude 80-09-17.

mission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.